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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,572	12/28/2004	Hermann Grether	SMB-PT121 (PC 03 445 B US	7694
3624 7590 11/02/2009 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER GORMAN, DARREN W	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 11/02/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,572

Applicant(s)

GRETHER, HERMANN

Examiner

Darren W. Gorman

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-63.66 and 67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-36.41-46.51-57.59-63.66 and 67 is/are rejected.
- 7) ☒ Claim(s) 37-40.47-50 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on September 21, 2009 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application Number 10/523,574 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 34-36, 41-46, 53-56, 59-63 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by Flieger, USPN 6,588,682.

Flieger (see Figures 3 and 5) shows a sanitary component having a jet regulating device in an interior of a mounting housing, the jet regulating device comprising at least one mounted element (45) mountable in the mounting housing that has bars (47) oriented transverse to a direction of flow, between which passageways are defined, wherein the bars of the at least one mounted element are arranged in the form of a grid/mesh, which cross at junction points located in a single plane. Flieger also discloses that the component further includes a perforated

disc/plate jet separating device (see column 6, lines 24-25) upstream from the at least one mounted element, wherein the jet separating device separates an incoming flow into a multitude of individual jets. As to the recitation regarding impingement of the individual jets upon junction points of the at least one mounted element, since mounted element (45) is arranged downstream from the disclosed jet separating device, at least some of the water jets, after passing through the pins (37) of the splitting portion (35) will necessarily impinge upon junction points of mounted element (45). Flieger also discloses alternative types of mounted elements (45) including a radial grating arrangement (see column 7, lines 22-27). Further, Flieger discloses that the housing is divided into at least two parts (33, 34) which are detachably combined to form a sleeve-like mounting housing (see column 6, lines 21-24), and the mounted element (45) is insertable (see column 6, line 66 through column 7, line 6) into the housing and abuts a stop/support (46). Also, the component is constructed modularly using multiple elements attached to one another. Further, the combination of the perforated plate and mounted element (45) reasonably anticipate at least two mounted elements spaced from one another. Flieger also discloses a process of dip-coating or spraying the housing parts with a water-repellant material (see column 6, lines 47-51), including examples of a material which exhibits elastic properties (silicone or polytetrafluoroethylene) thus at least at the outflow side of the housing in the water discharge opening area, a water-repellant surface exists, and the housing parts are thus manufactured out of an elastic material or a material with a soft or water-repellant surface. Also, the groove (46) formed in the outflow side of the housing where mounted element (45) is mounted into the housing defines a lip that is reasonably a constriction/narrowing of its flow-through cross section.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 51, 52, 57 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flieger.

As to claims 51 and 52, as noted above, Flieger discloses a perforated plate/jet separating device within the housing, and Flieger discloses at least two detachable/connectable housing parts (33, 34), however Flieger is silent as to whether or not the perforated plate/jet separating device is integral with one of the at least two housing parts.

In the event that the perforated plate/jet separating device of Flieger is not integrally formed with at least one of the at least two housing parts, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the perforated plate/jet separating device integrally with at least one of the at least two housing parts of the Flieger device, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

As to claim 57, the claim merely recites that the two housing parts “can be” combined with one another and in which at least two jet regulating devices “can be” mounted. Such functional recitations are capable of being met by the device shown in the Flieger reference.

As to claim 67, although Flieger does not specifically address a “snap-on” type connection for connecting the at least two housing parts together, there is inherently some form of mechanical connection between the at least two housing parts of the Flieger housing such that the housing is reliably retained in its desired, assembled and functional configuration, otherwise the parts of the housing would separate from each other at least upon receiving water pressure therein during use. The Examiner takes Official Notice that snap-on or snap-together connections for connecting two housing parts of a sanitary component are well known in the art for providing a reliable means to retain the sanitary component housing in its desired, assembled and functional configuration. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a snap-on type connection for connecting the at least two housing parts of the device shown by Flieger, since it is well known in the art to use a snap-on type connection for connecting two housing parts of a sanitary component for providing a reliable means to retain the sanitary component housing in its desired, assembled and functional configuration.

Allowable Subject Matter

6. Claims 37-40, 47-50 and 58 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments, see pages 10-12 of the "Remarks/Arguments" section of the response filed September 21, 2009, with respect to the rejection of claims 34-42, 44-60, 66 and 67 under 35 U.S.C. 102(b) as being anticipated by Wildfang (German Patent Document DE 200 06 163 U1) have been considered but are moot in view of the new ground(s) of rejection set forth above.

8. Applicant's arguments, see page 13 of the "Remarks/Arguments" section of the response filed September 21, 2009, with respect to the prior art reference to Flieger (U.S. Patent No. 6,588,682) have been fully considered but they are not persuasive. As set forth above under paragraph 3 of this office action, Flieger clearly discloses the housing parts including at least one soft or water-repellent surface (see again, column 6, lines 47-51 of Flieger).

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W Gorman/
Primary Examiner, Art Unit 3752